

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Consolidated Cases of:

Meg Forney,
Complainant,
vs.

Brad Bourn,
Respondent,

and

Brad Bourn,
Complainant,
vs.

Margaret Forney,
Respondent.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled consolidated matters came on for an evidentiary hearing on January 20, 2010, before a panel of three Administrative Law Judges: Barbara L. Neilson (Presiding Judge), Beverly Jones Heydinger, and James F. Cannon. The parties submitted post-hearing briefs on February 19, 2010, and reply briefs on March 5, 2010. The hearing record closed on March 5, 2010.

Meg Forney appeared on her own behalf without counsel.

Morgan Smith, Attorney at Law, Smith & Raver, LLP, appeared on behalf of Brad Bourn.

STATEMENT OF ISSUES

1. Did Brad Bourn violate Minnesota Statute § 211B.02 by stating in written campaign material that he had the endorsements of State Senator Scott Dibble and State Representative Frank Hornstein?

The Panel concludes that Ms. Forney has established by a preponderance of the evidence that Mr. Bourn violated Minn. Stat. § 211B.02 by stating in written campaign material that he had the endorsements of Senator Dibble and Representative Hornstein.

2. Did Meg Forney violate Minn. Stat. § 211B.02 by listing on her July 2009 campaign website endorsements she obtained during her 2005 campaign?

The Panel concludes that Mr. Bourn has not established by a preponderance of the evidence that Ms. Forney violated Minn. Stat. § 211B.02 by displaying 2005 endorsements on her 2009 campaign website.

3. Did Meg Forney violate Minn. Stat. § 211B.02 by telling the Star Tribune Editorial Board on September 24, 2009, that she had the endorsement of the Minneapolis Professional Employees Association (MPEA)?

The Panel concludes that Mr. Bourn has not established by a preponderance of the evidence that Ms. Forney violated Minn. Stat. § 211B.02 by telling the newspaper editorial board that she was endorsed by the MPEA.

Based upon the entire record, the Panel makes the following:

FINDINGS OF FACT

1. Brad Bourn and Meg Forney were both candidates for the Minneapolis Park and Recreation Board District 6 Commissioner seat in the November 3, 2009, election. Bourn won the election. He received approximately 48 percent of the vote and Forney received approximately 36 percent of the vote.¹

2. This matter involves two separate complaints:

- a. a complaint filed by Meg Forney on November 6, 2009, alleging that Brad Bourn violated Minnesota Statutes §§ 211B.02 (false endorsement) and 211B.06 (false campaign material) in connection with his campaign for the Park and Recreation Board District 6 seat; and
- b. a complaint filed by Brad Bourn on December 14, 2009, alleging that Meg Forney violated Minnesota Statutes §§ 211B.02 (false endorsement) and 211B.06 (false campaign material) in connection with her campaign for the Park and Recreation Board District 6 Commissioner seat.

3. After reviewing the complaint filed by Forney and the attached exhibits, the Presiding Administrative Law Judge determined on November 10, 2009, that Forney's complaint set forth a *prima facie* violation of Minn. Stat. § 211B.02 with respect to Bourn's statements on his campaign material that he had the endorsement of State Senator Scott Dibble and State House Representative Frank Hornstein. The other allegations in the complaint were dismissed.

¹Minnesota Secretary of State Election Results, available at: <http://electionresults.sos.state.mn.us/20091103/ElecRsults.asp?CtyCd=27&M=MCD&Races=PARK%20AND%20RECREATION%20BOARD%20DISTRICT%206%20-%201st%20CHOICE%20%28City%20of%20Minneapolis-135%29&CtyNm=%3A43000&ZoneName=43000%20%20City%20of%20Minneapolis&DID=43000%20&mcdOffDist=1090>.

4. After reviewing the complaint filed by Bourn and the attached exhibits, the Presiding Administrative Law Judge determined on December 16, 2009, that Bourn's complaint set forth a *prima facie* violation of Minn. Stat. § 211B.02 with respect to the endorsements listed on Forney's website in July 2009 and the statement Forney made to the Star Tribune Editorial Board regarding having the endorsement of the Minneapolis Professional Employees Association. The other allegations in the complaint were dismissed.

5. These two complaints were joined for disposition and consolidated into OAH Docket No. 11-0325-20954-CV by Order of the Chief Administrative Law Judge issued on December 18, 2009.

Complaint against Brad Bourn

6. Bourn began campaigning for Park Board in October 2008. He won the Minneapolis DFL endorsement at the Minneapolis DFL convention on May 16, 2009. From May through November, Bourn campaigned extensively throughout the city and he sought endorsements from many local officials and organizations. He received hundreds of statements of support electronically via his website, which was organized to allow individuals to add their names to his list of supporters. He also received written email confirmation from some of the prominent individuals and organizations who endorsed him, such as Vice President Walter Mondale and the Star Tribune Editorial Board.²

7. Park Board District 6 is located in an area of Minneapolis that is represented in part by State Senator Scott Dibble and State Representative Frank Hornstein, both members of the DFL.³ Over 80% of the voters in their respective districts voted for Senator Dibble and Representative Hornstein in the 2006 election.⁴ Representative Hornstein was re-elected in 2008, again receiving over 80% of the votes in his district.⁵

8. Because Senator Dibble and Representative Hornstein are popular among voters in their districts and southwest Minneapolis generally votes heavily for DFL candidates, an endorsement by Senator Dibble and Representative Hornstein of a candidate running for election in the District 6 Park Board race could have a positive impact.⁶

9. On a number of occasions during the campaign, Bourn sought the endorsements of Senator Dibble and Representative Hornstein. Each time they unequivocally told Bourn that they would not endorse him or any other District 6 Park Board candidate and that they intended to stay neutral in the Park Board race.⁷

² Testimony ("Test.") of B. Bourn; Exhibits ("Exs.") 51, 67, 68.

³ Ex. 50.

⁴ Exs. 26, 27; Test. of M. Forney.

⁵ Ex. 29.

⁶ Test. of M. Forney; Test. of B. Bourn; Test. of John Erwin; Ex. 30.

⁷ Test. of B. Bourn.

10. On September 24, 2009, Senator Dibble emailed Bourn and specifically stated that he was not supporting Bourn or Forney for the Park Board seat.⁸

11. On October 21, 2009, Bourn emailed Senator Dibble and Representative Hornstein and requested them to “reconsider their neutrality position” in the Park Board race and endorse him.⁹

12. During the campaign, Steve Jecha, another candidate for Park Board, made some comments suggesting that Bourn should not run for Park Board because he rented an apartment and did not own property. Others, including Bourn, Senator Dibble, and Representative Hornstein, disagreed with Jecha’s comments and attempted to distance themselves from his statements. At one time, Senator Dibble and Representative Hornstein believed that Forney was coordinating her campaign with Jecha.

13. During the afternoon of October 22, 2009, Bourn talked to Senator Dibble at a campaign event at Martin Luther King Park in Minneapolis. The two discussed the comments made by Mr. Jecha about Bourn not owning property in the City. During the conversation, Bourn asked Senator Dibble about his request for endorsement and Senator Dibble replied that he and Representative Hornstein were “working on a plan to help him.” Bourn asked again for Senator Dibble’s endorsement and Senator Dibble replied, “Let me talk to [Forney] first.”¹⁰

14. On the evening of October 22, 2009, a campaign event took place at Linden Hills Park. Forney, Bourn, Senator Dibble and Representative Hornstein were present at the event.¹¹ At one point, Senator Dibble, Representative Hornstein, Bourn, and City Council Member Elizabeth Hodges were joking with each other about renting homes and running for public office. Hodges and Senator Dibble also rent their homes, and the group exchanged “high-fives” in celebration of renters.¹² At some point during the evening, Senator Dibble and Representative Hornstein told Bourn that they “had a plan to help” him and that they were “excited to help” him.¹³

15. On October 23, 2009, Senator Dibble and Representative Hornstein met with Forney and discussed the campaign and how they could help her distance herself from Jecha, who they believed had espoused ideas antithetical to the DFL platform.¹⁴

16. On October 25, 2009, Bourn and his campaign volunteers created three pieces of campaign literature. On one of the pieces, Bourn claimed to have the endorsements of Senator Dibble and Representative Hornstein. The card read:

⁸ Ex. 69.

⁹ Ex. 75.

¹⁰ Test. of B. Bourn.

¹¹ Test. of B. Bourn.

¹² Test. of E. Hodges; Test. of Bourn.

¹³ Test. of B. Bourn.

¹⁴ Test. of M. Forney.

I'm running for an independent Park Board because I believe all Minneapolis deserves the best in parks. I'm humbled and honored to be endorsed by all the people on the other side of this card, as well as these people and groups: DFL, Mayor RT Rybak, Minneapolis Regional Labor Federation, AFSCME, Operating Engineers Local 49, Sierra Club, Stonewall DFL, State Senator Scott Dibble, State Representative Frank Hornstein, John Erwin, Park Board President Tom Nordyke, Meg Tuthill.¹⁵

17. Bourn sent these pieces of campaign literature to the printer on October 26, 2009, with instructions to mail the three pieces of literature in close proximity to each other so residents of Park Board District 6 would receive the pieces within four or five days of the November 3 election. Bourn reviewed the electronic proof of the literature before it was sent to the printer. Approximately 3,100 copies of the piece on which he claimed the endorsements of Senator Dibble and Representative Hornstein were printed. Approximately 2,900 of those cards were delivered to addresses within Park District 6 that were derived from a data base available to DFL-endorsed candidates.¹⁶

18. Senator Dibble and Representative Hornstein never endorsed Bourn.¹⁷

19. On October 31, 2009, Bourn campaigned door-to-door in Minneapolis with other DFL-endorsed candidates and DFL elected officials, including Representative Hornstein. At one point, Bourn and Representative Hornstein discussed the campaign literature delivered to homes that day on which Bourn claimed to have the endorsements of Representative Hornstein and Senator Dibble. Representative Hornstein told Bourn that he and Senator Dibble had never intended to formally endorse him. Representative Hornstein thereafter phoned Senator Dibble and left him a message to inform him of the endorsement on the campaign literature.¹⁸

20. Later that evening, October 31, 2009, Senator Dibble and Representative Hornstein emailed Bourn the following message:

Dear Brad,

Thank you for warning us about your campaign's error in listing us on a recent mailing as having endorsed your candidacy. Please do not list us as supporters in any future voter communication.

In addition, we request that you acknowledge this mistake in all your current web-based campaign communications. We remain neutral in this case.

Sincerely,

Scott Dibble and Frank Hornstein¹⁹

¹⁵ Ex. 1.

¹⁶ Test. of B. Bourn.

¹⁷ Test. of B. Bourn; Exs. 15, 48, 49.

¹⁸ Exs. 48, 49.

¹⁹ Ex. 15.

21. Shortly thereafter, Bourn made the following entry on his Facebook page: “A recent mailer sent out from my campaign included a mistake. Please visit bradbournforparks.org for the correction. Thanks and good luck to us all on Tuesday! Only a few more days!” The Facebook page did not explain the mistake made on the campaign literature.²⁰

22. Bourn posted the following update on his website bradbournforparks.org on November 1, 2009:

Many of you may have received or will be receiving a mailer from my campaign. There was a mistake on this mailer that was not noticed before it went to the printer. The mailer listed State Senator Scott Dibble and State Representative Frank Hornstein as endorsing my candidacy. Sen. Dibble and Rep. Hornstein have not officially made an endorsement in this election... I have tremendous respect for Sen. Dibble and Rep. Hornstein and share many of the same values they advocate for at the state level. I accept responsibility for the error in the mailer and apologize for any confusion this may have caused. Our campaign noticed this error and brought it to the immediate attention of Sen. Dibble, Rep. Hornstein, and my opponent. My opponent made a similar mistake a few weeks ago in a screening with the Star Tribune and was quick to clear up her mistake as well.²¹

23. At the hearing, Bourn admitted that, “upon reflection,” he never had the endorsement of Senator Dibble or Representative Hornstein and he never had their written permission to state that he had their endorsements.²²

24. Neither Senator Dibble nor Representative Hornstein testified at the hearing. The parties stipulated to the receipt of affidavits from each of them. In their affidavits, Senator Dibble and Representative Hornstein indicated that they “did not endorse or publicly support anyone in the 2009 election for District 6 Park Board.”²³

Complaint against Meg Forney – MPEA

25. The Minneapolis Professional Employees Association (MPEA) initially screened park board candidates for endorsement in August 2009. MPEA intended to make formal endorsements in early September but the endorsements were delayed because the MPEA Executive Board, which approves each recommended endorsement, rescheduled its September meeting.²⁴

²⁰ Ex. 16.

²¹ Exs. 18, 80.

²² Test. of B. Bourn.

²³ Exs. 48, 49.

²⁴ Test. of Larry Umphrey.

26. On September 22, 2009, the MPEA Executive Board approved the recommended endorsements, including endorsements for both Forney and Bourn for Park Board Commissioners.²⁵

27. On September 23, 2009, Meg Forney received a phone call from a male from MPEA who told her that the MPEA Board had endorsed her. The caller informed Forney that the formal announcement of MPEA's endorsements had been delayed, but said that Forney would receive a letter soon.²⁶

28. On September 24, 2009, Bourn and Forney met with the Star Tribune Editorial Board in the hopes of obtaining the Star Tribune's endorsement. During this meeting, Forney told the Editorial Board that she had received the endorsement of the MPEA.²⁷

29. On September 25, 2009, Larry Umphrey, the Park Board Representative on the MPEA Board, notified both Forney and Bourn by email that they had been endorsed by the MPEA for Park Board Commissioner.²⁸

Complaint against Meg Forney – 2005 Endorsements

30. Forney launched her campaign for Park Board Commissioner on July 10, 2009. On that date she instructed her website manager to redesign her website, which included information regarding her real estate career and also information regarding her 2005 Park Board campaign, including the endorsements she received in 2005. Forney instructed her website manager to create two pages – one for “MegForney.com” (relating to her real estate business) and another for “MegForney.org” (relating to her Park Board campaign). She also instructed the website manager to include her previous campaign material under a “2005” tab on one of those pages. Viewers could then click the “2005” tab to view information regarding her previous campaign.²⁹

31. During her 2005 Park Board campaign, Forney had, in fact, obtained each of the endorsements she claimed on her website. None of the endorsements she claimed were false.³⁰

32. Sometime after Forney announced her candidacy on July 10, 2009, Daniel McConnell, the Chair of the Minneapolis DFL, received a complaint from someone that Forney was claiming false endorsements on her website. McConnell viewed the website and saw that Forney claimed certain endorsements. The website did not make clear, however, that the endorsements referenced had been received during her previous Park Board campaign in 2005. Instead it appeared to McConnell that Forney was claiming that she had received those endorsements during the 2009 campaign.

²⁵ Test. of L. Umphrey.

²⁶ Ex. 14; Test. of M. Forney.

²⁷ Test. of M. Forney.

²⁸ Ex. 8.

²⁹ Test. of M. Forney.

³⁰ Test. of M. Forney.

Some of the endorsements listed on Forney's website were endorsements that Bourn had obtained for the 2009 campaign.³¹

33. On July 12, 2009, McConnell emailed Forney and told her that her website needed to be updated to show that the 2005 endorsements she had received had been for the previous campaign in order to make it clear that she had not received those endorsements for the 2009 campaign.³²

34. After receiving the email from McConnell, Forney contacted her website manager. The website manager explained to Forney that, due to browser incompatibility, some browsers allowed visitors to access older versions of the website. As a result, despite the fact that the website manager had updated Forney's website on July 10, 2009, the older version of Forney's website, which displayed the endorsements she received in 2005 without differentiating the campaign years, was still available when certain web browsers were used.³³

35. By July 15, 2009, Forney's website manager had fixed the technical problem that had caused certain browsers to display the older website version. After that date, Forney's websites clearly delineated the endorsements Forney received and when she received them. There is no evidence that any older versions of the website inadvertently appeared after that date. McConnell did not receive any further complaints about Forney or her website.³⁴

Based upon the foregoing Findings of Fact, the Panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the Panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.02 provides as follows:

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

3. The burden of proving the allegations in the complaint is on the complainant in each case. The standard of proof of a violation of Minn. Stat. § 211B.02 is a preponderance of the evidence.³⁵

³¹ Test. of D. McConnell.

³² Test. of D. McConnell; Ex. 62.

³³ Test. of M. Forney.

³⁴ Test. of M. Forney.

³⁵ Minn. Stat. § 211B.32, subd. 4.

4. Meg Forney has demonstrated by a preponderance of the evidence that Brad Bourn violated Minn. Stat. § 211B.02 by stating in written campaign material that he had the endorsement of State Senator Scott Dibble and State Representative Frank Hornstein.

5. Mr. Bourn shall pay a fine of \$1,600 for this violation.

6. Brad Bourn has not demonstrated by a preponderance of the evidence that Meg Forney violated Minn. Stat. § 211B.02 by falsely implying on her website that she had received certain endorsements for the 2009 election.

7. Brad Bourn has not demonstrated by a preponderance of the evidence that Meg Forney violated Minn. Stat. § 211B.02 by stating on September 24, 2009, that she had the endorsement of the MPEA.

8. These Conclusions are reached for the reasons set forth in the attached Memorandum, which is hereby incorporated into these Conclusions.

Based upon the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That, having been found to have violated Minn. Stat. § 211B.02, Brad Bourn shall pay a civil penalty of \$1,600.00 by April 30, 2010.³⁶

That the complaint against Meg Forney is dismissed.

Dated: March 19, 2010

s/Barbara L. Neilson
BARBARA L. NEILSON
Presiding Administrative Law Judge

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

s/James F. Cannon
JAMES F. CANNON
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

³⁶ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

There are three issues in this case. The first issue is whether Brad Bourn falsely claimed the endorsements of State Senator Scott Dibble and State Representative Frank Hornstein in written campaign material. The second issue is whether Meg Forney falsely claimed the endorsement of MPEA during her interview with the Star Tribune Editorial Board. The third issue is whether Meg Forney falsely implied on her website that she had received certain endorsements for the 2009 campaign.

Claim against Brad Bourn

With regard to the first issue, the Panel concludes that Bourn violated Minn. Stat. § 211B.02 by stating in written campaign material that he had the endorsement of Senator Dibble and Representative Hornstein. Minn. Stat. § 211B.02 provides a candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate has the support or endorsement of a major political party. Section 211B.02 further provides that a candidate may not state in written campaign material that the candidate has the support or endorsement of an individual without first getting written permission from the individual to do so. Bourn admitted during the hearing that “upon reflection” he did not have the endorsements of Senator Dibble or Representative Hornstein. Bourn testified that he mistakenly believed they had endorsed him, but his testimony was not credible.

Bourn testified that he believed Senator Dibble and Representative Hornstein endorsed him because, while at a campaign event on October 22, 2009, they said “they had a plan to help him.” He also testified that he believed he asked them for their written permission to print their endorsement and that he believed they replied that they would provide it. The Panel finds that Bourn’s testimony lacks credibility for a number of reasons. First, Bourn had attempted numerous times to obtain the endorsements of Senator Dibble and Representative Hornstein. Just the day, before on October 21, Bourn had emailed the two legislators and asked them to “urgently reconsider their neutrality position” in the Park Board race and endorse him. There is no evidence that either Senator Dibble or Representative Hornstein ever provided a written response to Bourn’s email request. Under these circumstances, it is not credible that Bourn believed he had, in fact, received their endorsement.

Secondly, Bourn had expended much effort to obtain the endorsements of many local officials and organizations and he gathered written permission from many of the people who endorsed him. His testimony made clear that he was familiar with the distinction between a general statement of support and a formal endorsement and that he knew he needed to obtain written permission before he could claim the endorsement of an individual in his campaign literature. Given this knowledge, it is not reasonable or

believable that Bourn would have interpreted the exchange of “high fives” or the mere statement that Senator Dibble and Representative Hornstein had “a plan to help” him to convey a formal endorsement.

Third, Bourn’s testimony that he somehow overlooked the fact that Senator Dibble and Representative Hornstein never sent him written permission to use their endorsement in campaign literature is not credible. Bourn asserted that, while he was writing his pieces of campaign literature on October 25 or 26, 2009, he verified that he had each individual’s written permission to use his or her endorsement in the campaign material he prepared. He testified that he searched through numerous email accounts and written letters to verify that he had received written permission from each person, but that he somehow overlooked the fact that he had not received written permission from Senator Dibble or Representative Hornstein. The endorsements of Senator Dibble and Representative Hornstein were obviously meaningful to Bourn and he knew he had not received them as of October 21 when he renewed his request. A written endorsement would have been received between October 21 and October 25 or 26, if received at all. Bourn’s contention that he merely “miscounted” his endorsements and failed to notice that Senator Dibble and Representative Hornstein had not provided written endorsements is implausible.

The Panel has concluded that Bourn made knowingly false claims that Senator Dibble and Representative Hornstein endorsed him and that he failed to obtain written permission from the legislators before using their names in campaign literature, in violation of Minn. Stat. § 211B.02.³⁷ The Panel has determined that these violations, which were reflected in approximately 2,900 pieces of campaign literature targeted to DFL-voters within Park District 6, were deliberate. The violations were made despite the clarity of the statutory prohibitions. The timing of the mailing, just days before the election, made it difficult for opponents to respond before the election. Although there is no question that Bourn knew of the error on October 31, when he was informed in no uncertain terms by the legislators, he merely noted on his Facebook page that the mailer contained a “mistake” and required readers to visit his campaign website for more information. He posted an apology and retraction of the false endorsement on his campaign website on November 1, just two days before the election.

Given the popularity of Senator Dibble and Representative Hornstein, the false claim of endorsement likely influenced some voters. However, the Panel is unable to conclude that Forney would have been elected had Bourn not claimed the false endorsements. The evidence at the hearing demonstrated that Bourn campaigned for the seat for many months and received the endorsement of the Minneapolis DFL as well as that of other prominent organizations and individuals. Likewise, the Panel is not convinced by Forney’s contention that the effect of the false endorsements was somehow compounded by the use of instant run-off voting in this election. Because the

³⁷ See *In re Ryan*, 303 N.W.2d 462, 468 (Minn. 1981) (rejecting candidate’s claim of good-faith violation of Minn. Stat. § 210A.02 (predecessor of Minn. Stat. § 211B.02)) (“Candidates who seek elected office should understand more clearly the limits of section 210A.02. Accordingly, candidates will have a most difficult time claiming good faith under section 210A.38 if violations similar to those presently under consideration occur hereafter”).

Panel finds that Bourn's violation of Minn. Stat. § 211B.02 was deliberate and had some impact on several voters, and the timing of the mailing made it difficult to counter, the Panel concludes a fine in the amount of \$1,600 is appropriate.

Claims against Meg Forney

Bourn alleges Forney violated Minn. Stat. § 211B.02 because she claimed that she was endorsed by MPEA prior to receiving written confirmation and because she falsely implied on her website that she had received certain endorsements in the 2009 campaign.

The Panel concludes that Bourn's complaint fails on both counts.

Endorsement of MPEA

Bourn did not establish by a preponderance of the evidence that Forney falsely claimed the MPEA endorsement when she spoke with the Star Tribune Editorial Board on September 24, 2009. There is no requirement in Minn. Stat. § 211B.02 that a candidate obtain written permission from an *organization* such as the MPEA before stating that they have the organization's endorsement; the requirement that advance written permission be obtained is limited to *individuals*.

Forney persuasively testified that she received a phone call from MPEA on September 23 informing her that the MPEA Board had endorsed her. Larry Umphrey, MPEA Board Member, offered credible testimony that the MPEA Executive Board had, in fact, approved the recommended endorsements, including the endorsement of Forney, on September 22, 2009. Therefore, when Forney told the Star Tribune Editorial Board on September 24, 2009, that she had been endorsed by MPEA, it was true. Accordingly, the Panel concludes that Forney did not violate Minn. Stat. § 211B.02 by stating that she had the endorsement of the MPEA.

2005 Endorsements on Website

The Panel concludes that Bourn also did not establish by a preponderance of the evidence that Forney falsely implied endorsements on her website. Between July 10 and July 15, it was possible (if particular web browsers were used) to access an older version of Forney's website that listed certain endorsements she had received during her prior campaign for Park Board in 2005 but did not make it clear when Forney actually received the endorsements. Potential voters viewing this version of Forney's website could have been given the impression that Forney had received these endorsements during the 2009 campaign. But Forney convincingly testified that the endorsements appeared only because of a technical glitch having to do with browser incompatibility. More importantly, there is no evidence that Forney intended her website to portray her previous endorsements as endorsements for her 2009 campaign. After she learned of the technical error that allowed visitors to access an older version of the website, she immediately had her website manager correct the error and also clarify the endorsement information included on the website. Because Forney took prompt action to address the problem, the older version of the website was only available for viewing

for five days in July, several months before the November election. The Panel concludes that Forney did not “knowingly” make a claim of false endorsement on her website and thus did not violate § 211B.02.³⁸

B. L. N., B. J. H., and J. F. C.

³⁸ See *In re Ryan*, 303 N.W.2d at 467 (A candidate violates § 210A.02 (predecessor to § 211B.02) “knowingly” if he knew that his literature falsely claimed or implied that he had party support or endorsement).